

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BERNELL DUPLESSIS, individually,

Plaintiff,

v.

GOLDEN STATE FOODS, a Delaware
Corporation doing business in Washington
State; DANIEL VAN HOOZER, individually,
and JANE DOE VAN HOOZER, individually,
and the marital community composed thereof

Defendants.

CASE NO. C06-5631RJB

ORDER DENYING PLAINTIFF'S
MOTION TO REMAND/AMEND
COMPLAINT AND REMAND TO
WASHINGTON STATE
SUPERIOR COURT WITHOUT
PREJUDICE

This matter comes before the Court on the Plaintiffs' Motion to Remand/Amend Complaint and to Remand to Washington State Superior Court (Dkt. 6). The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff has been an employee of defendant Golden State Foods for twelve years and brings the following claims: (1) racial discrimination in violation of RCW 46.60 *et seq.*; (2) hostile work environment in violation of RCW 46.60 *et seq.*; (3) disparate treatment in violation of RCW 46.60 *et seq.*; (4) disparate impact in violation of RCW 46.60 *et seq.*; (5) unlawful retaliation; (6) negligence, negligent infliction of emotional distress, and negligent hiring, retention, and supervision; (7) intentional infliction of emotional distress, outrage, assault, and battery; and (8) equal rights under the law (42 U.S.C. §1981 and Title VII of the Civil Rights Act of 1964). Dkt.

1 1-2, Exh. OO at 25-26 (Second Amended Complaint), Dkt. 6 at 3. The Second Amended
2 Complaint, adding references to 42 U.S.C. §1981 and Title VII, was filed on October 12, 2006.
3 Dkt. 1-2, Exh. OO at 25-26. On October 30, 2006, the defendants removed the case to federal
4 court. The plaintiff now moves for the following relief: (1) remand of the case to Washington
5 State Superior Court, (2) remand of the state law claims to Pierce County Superior Court, or (3)
6 leave to amend the complaint to delete references to federal law and remand to Pierce County
7 Superior Court, in which case the plaintiff will file his federal claims separately in federal court.
8 Dkt. 6 at 1.

9 **II. DISCUSSION**

10 **A. PROPER REMOVAL**

11 Defendants may remove to federal court “any civil action brought in a State court of
12 which the district courts of the United States have original jurisdiction.” 28 U.S.C. §1441(b).
13 District courts have original jurisdiction over “all civil actions arising under the Constitution, laws,
14 or treaties of the United States.” 28 U.S.C. §1331. The removal statute is strictly construed in
15 favor of remand, and the burden of establishing federal jurisdiction is on the defendant. *Duncan v.*
16 *Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996).

17 The presence or absence of federal question jurisdiction is governed by the well-pleaded
18 complaint rule. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The well-pleaded
19 complaint rule provides that federal question jurisdiction exists only when a federal question is
20 presented on the face of the plaintiff’s properly pleaded complaint. *Id.* The plaintiff is said to be
21 the master of her complaint because she can avoid federal jurisdiction by relying solely on state
22 law. *Id.*

23 Mr. Duplessis contends that the removal was improper because “the violation of 42
24 U.S.C. §1981 and [T]itle VII action alleged in the Plaintiff’s [Second Amended C]omplaint does
25 [sic] not constitute independent federal claims but simply add an alternative theory for recovery of
26 punitive damages *under state law*, which incorporates federal law.” Dkt. 6 at 6 (emphasis added).
27 Specifically, the plaintiff contends that the Washington Law Against Discrimination (“LAD”)
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1 impliedly authorizes recovery of punitive damages because it allows plaintiffs to recover “any
2 other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964
3 as amended.” RCW 49.60.030(2). The plaintiff makes no such contention to justify the Second
4 Amended Complaint’s reference to 42 U.S.C. §1981.

5 As a threshold matter, the Court notes that the language of the Second Amended
6 Complaint does not explicitly support the plaintiff’s reading. The Second Amended Complaint
7 lists eight “claims for relief.” Dkt. 1-5, Exh. OO at 25. The eighth paragraph simply states, “Equal
8 Rights under the law (42 U.S.C. §1981 and Title VII of the Civil Rights Act of 1964): Plaintiff
9 incorporates all prior assertions in this [Second Amended] Complaint as the proximate cause of
10 Plaintiff’s injuries.” *Id.* at 26. This language does not suggest that 42 U.S.C. §1981 and Title VII
11 of the Civil Rights Act of 1964 are referenced only as elements of the plaintiff’s state law claims.

12 In *Dailey v. North Coast Life Ins. Co.*, 129 Wn.2d 572, 577 (1996), the Washington
13 Supreme Court squarely rejected the plaintiff’s construction of the LAD, holding that [i]f the
14 Legislature intended to make punitive damages available for employment discrimination under the
15 LAD, it would have unambiguously so provided. If the plaintiff seeks punitive damages, he cannot
16 do so under the LAD. As the master of his complaint, the plaintiff could have elected to bring
17 only state claims. Instead, he amended his complaint to add references to Title VII and 42 U.S.C.
18 §1981 in order to facilitate recovery of punitive damages. These references therefore constitute
19 separate federal claims conferring original jurisdiction on this Court. Removal was proper.

20 **B. AMENDMENT**

21 The plaintiff seeks leave of court to file a third amended complaint omitting federal claims
22 and asks the Court to then decline to exercise jurisdiction over remaining state claims. Dkt. 6 at 6.
23 The plaintiff intends to file a separate action in federal court to assert his federal claims. *Id.* at 8.

24 Federal rule 15(a) provides that leave to amend “shall be freely given when justice so
25 requires.” Whether to grant a motion to amend is within the discretion of the court. *DCD*
26 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 185 (9th Cir. 1987). Courts should be mindful of
27 Federal Rule 15’s purpose of facilitating a decision on the merits rather than on a technicality. *Id.*

1 at 186. In deciding whether to allow amendment, courts consider four factors: bad faith, undue
2 delay, prejudice to the opposing party, and futility of amendment. *Id.* The Court should decline to
3 allow Mr. Duplessis to amend his complaint to omit his federal claims only to then file those
4 claims in a separate federal lawsuit. The Court should also decline to remand only the plaintiff's
5 state claims. To hold otherwise would likely require simultaneous adjudication of the same facts in
6 different forums, which would be highly prejudicial to the defendants and would not serve the
7 ends of justice.

8 Dismissal of the plaintiff's federal claims with prejudice would likely ameliorate the
9 prejudice to the defendants. If he so desires, the plaintiff should be allowed to seek dismissal of his
10 federal claims with prejudice and to again move for remand. The Court's denial of the plaintiff's
11 motion should therefore be without prejudice.

12 **C. LATE FILED DOCUMENTS**

13 Since the court's drafting of the foregoing, plaintiff has filed an Amended Complaint (Dkt.
14 10) without leave of court. The status of that document is in question due to FRCP 15. Also,
15 each party has filed supplemental briefing which the court has considered (Dkts. 11 & 12). None
16 of these last-minute filings have changed the court's initial analysis.

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III. ORDER

Therefore, it is hereby

ORDERED that the Plaintiffs' Motion to Remand/Amend Complaint and to Remand to Washington State Superior Court (Dkt. 6) is **DENIED WITHOUT PREJUDICE**.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 8th day of December, 2006.



Robert J. Bryan
United States District Judge